

1 STEPHEN P. BERZON (SBN 46540)  
JEFFREY B. DEMAIN (SBN 126715)  
2 PEDER J. THOREEN (SBN 217081)  
Altshuler, Berzon, Nussbaum,  
3 Rubin & Demain  
177 Post Street, Suite 300  
4 San Francisco, California 94108  
Telephone: (415) 421-7151  
5 Facsimile: (415) 362-8064  
[sberzon@altshulerberzon.com](mailto:sberzon@altshulerberzon.com)  
6 [jdemain@altshulerberzon.com](mailto:jdemain@altshulerberzon.com)  
[pthoreen@altshulerberzon.com](mailto:pthoreen@altshulerberzon.com)

7 Attorneys for Defendant  
8 Service Employees International Union,  
Local 1000  
9

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 DIANNE KNOX; WILLIAM L. BLAYLOCK; )  
13 ROBERT A. CONOVER; EDWARD L. )  
DOBROWOLSKI, JR.; KARYN GIL; )  
14 THOMAS JACOB HASS; PATRICK )  
JOHNSON; JON JUMPER; AND R. PAUL )  
15 RICKER, ON BEHALF OF THEMSELVES )  
AND THE CLASS THEY SEEK TO )  
16 REPRESENT, )

17 Plaintiffs, )

18 v. )

19 STEVE WESTLY, Controller, State of )  
California; AND CALIFORNIA STATE )  
20 EMPLOYEES ASSOCIATION, LOCAL 1000, )  
SERVICE EMPLOYEES INTERNATIONAL )  
21 UNION, AFL-CIO-CLC, )

22 Defendants. )  
23  
24  
25  
26  
27  
28

No. 2:05-CV-2198 MCE (KJM)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL  
1000'S MOTION TO DISMISS AND  
FOR PARTIAL SUMMARY  
JUDGMENT**

Date: March 20, 2006  
Time: 9:00 a.m.  
Judge Hon. Morrison C. England, Jr.  
Place: Courtroom 3  
15th Floor

## INTRODUCTION

1  
2 Defendant Service Employees International Union, Local 1000 (the “Union”) hereby  
3 seeks the dismissal of the claim brought by plaintiff R. Paul Ricker from this case on the  
4 ground that he lacks standing to bring the claim alleged (and therefore the Court lacks subject  
5 matter jurisdiction over him). The undisputed evidence also demonstrates that summary  
6 adjudication should be entered in the Union’s favor on Mr. Ricker’s merits claim.

7 Mr. Ricker is the only one of the plaintiffs who was a member of the Union at the time  
8 of the filing of the Complaint in this action. See the Union’s Statement of Undisputed Facts  
9 (“SUF”) ¶ 1. The *sole allegations* of the Complaint regarding plaintiff Ricker (and the class of  
10 Union members he seeks to represent) are that the Union “has not provided” them “with: (1) an  
11 opportunity to resign and, as nonmembers, raise an objection to the use of the dues/fee increase  
12 on the ballot propositions, politics and other nonbargaining activities; and (2) an immediate  
13 refund or reduction of the increase dues/fee amount.” *Id.* ¶ 2. However, Mr. Ricker’s  
14 deposition *testimony* shows that these allegations are untrue. As we discuss in detail below, he  
15 admitted that he has never been denied the opportunity to resign his Union membership, that he  
16 has been informed and long been aware of his right to resign and of his right to pay a reduced  
17 fair share fee if he were to resign, and that, notwithstanding his knowledge of these rights, he  
18 has affirmatively chosen to remain a Union member. See discussion, *infra*, at pages 2-3, 5-7.  
19 Since Mr. Ricker has admittedly not incurred the injuries alleged in the Complaint, he lacks  
20 standing to sue. And since the Union provided him with an opportunity to resign and become a  
21 non-member and fair share fee objector, summary adjudication against him on his merits claim  
22 is also appropriate.

## BACKGROUND

23  
24 This putative class action is brought by a group of California public employees who are  
25 represented by the Union. SUF ¶ 3. The plaintiffs include both a dues-paying Union member,  
26 Mr. Ricker, and non-members, so-called “fair share fee payers” who contribute fair share fees  
27 to the Union. *Id.* ¶ 4; see 11/8/05 Order at 3, Docket No. 23 (detailing basis upon which  
28 nonmembers contribute fair share fees to Union). The allegations in the Complaint center

1 around a temporary assessment enacted by the Union in Summer 2005 and effective beginning  
2 with the September 2005 payroll (paid by the State on the first day of October), which has been  
3 charged to members and fair share fee payers in addition to regular fees and dues. SUF ¶ 5.  
4 Plaintiffs allege that the procedures followed by the Union in the passage, implementation, and  
5 spending of the temporary assessment violated plaintiffs' rights under the First and Fourteenth  
6 Amendments of the Constitution. *Id.* ¶ 6.

7 As set forth in the Complaint, the alleged rights of member and non-member plaintiffs  
8 with respect to the assessment and collection of the 2005 temporary assessment are separate and  
9 distinct. *Compare id.* ¶ 2 with *id.* ¶ 7. As to *non-members*, plaintiffs claim that their rights  
10 have been infringed because the Union allegedly failed to provide them with "an opportunity to  
11 object to the use of the fee increase on . . . ballot propositions [in the November 8, 2005  
12 California special election], politics and other nonbargaining activities; and an immediate  
13 refund or reduction in the increased fee amount." *Id.* ¶ 7; *but cf.* 11/8/05 Order at 5-6 (noting  
14 that procedures followed by Union as to non-members were "unquestionably permitted" under  
15 relevant Supreme Court precedent). But as to *members*, plaintiffs make a *separate* claim that  
16 members' rights have been infringed because the Union allegedly failed to provide them with  
17 "(1) an opportunity to resign and, as nonmembers, raise an objection to the use of the dues/fee  
18 increase on the [November 8] ballot propositions, politics and other nonbargaining activities;  
19 and (2) an immediate refund or reduction of the increased dues/fee amount." SUF ¶ 2.

20 The present motion seeks to dismiss the claim of plaintiff Ricker, the only current  
21 Union member plaintiff, from this case. Plaintiff Ricker has been a member of the Union  
22 continuously since March 17, 1999. *Id.* ¶ 8. Collective bargaining agreements that have  
23 governed the terms and conditions of Mr. Ricker's employment explain that he has the right to  
24 resign his Union membership at any time and become a fair share fee payer. *Id.* ¶ 9. They  
25 state, in relevant part:

26 When fair share fees are in effect, an employee may withdraw from membership  
27 in the Union by sending a signed withdrawal letter to the Union with a copy to  
28 State Controller at any time. An employee who so withdraws his/her  
membership shall be subject to paying a Fair Share fee, if such a fee is  
applicable.

1 *Id.* ¶ 10. These collective bargaining agreements are and have been posted on and publicly  
2 available through the Union's and the California Department of Personnel Administration's  
3 websites. *Id.* ¶ 11.<sup>1/</sup> Moreover, the Union sent Mr. Ricker a copy of his bargaining unit's  
4 collective bargaining agreement in 2003 or 2004, which he admitted he keeps on a shelf and  
5 refers to when he has any questions regarding his employment. *Id.* ¶ 12.

6 Indeed, Mr. Ricker specifically testified in his deposition that he is aware that he does  
7 not have to be a member of the Union, and that he can instead choose to resign his membership  
8 and become a fair share fee payer. *Id.* ¶ 13. Since the day he joined the Union in 1999, Mr.  
9 Ricker has also been aware that fair share fee payers have the ability to pay less money to the  
10 Union than members pay in Union dues. *Id.* ¶ 14. And he testified that he is aware that fair  
11 share fee payers have the specific right to object to paying for certain Union expenditures,  
12 including some political expenditures. *Id.* ¶ 15.

13 Mr. Ricker admitted that he knew there was a vote on the temporary assessment by the  
14 Union's General Council. *Id.* ¶ 16. Mr. Ricker also knew, prior to its effective date, that the  
15 assessment had passed, by virtue of a letter sent to all Union members and fair share fee payers  
16 on August 31, 2005. *Id.* ¶ 17. Despite his knowledge that the temporary assessment had passed  
17 and would increase his Union dues, Mr. Ricker decided not to resign his membership because  
18 he prefers to retain the voting rights he enjoys as a Union member. *Id.* ¶ 18.

## 19 ARGUMENT

### 20 A. Legal Standards

21 The Union brings this motion to dismiss for lack of Article III standing – a matter of  
22 subject matter jurisdiction – pursuant to Federal Rule of Civil Procedure 12(h)(3); this motion  
23 is substantially identical to a Rule 12(b)(1) motion to dismiss.<sup>2/</sup> The Court may consider and  
24

---

25 <sup>1/</sup> Although the most recent collective bargaining agreement has expired, its terms  
26 remain in effect during the current contract negotiations by operation of law. Cal. Gov't Code  
27 § 3517.8(a).

28 <sup>2/</sup> A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction must be filed  
before the filing of a responsive pleading. Fed. R. Civ. P. 12(b). Rule 12(h)(3) preserves a

1 weigh extrinsic evidence in the context of a motion to dismiss under Rule 12(b)(1). *Autery v.*  
2 *United States*, 424 F.3d 944, 956 (9th Cir. 2005); *Roberts v. Corrothers*, 812 F.2d 1173, 1177  
3 (9th Cir. 1987) (where a jurisdictional issue is separable from the merits the court may hear  
4 evidence and resolve factual disputes and no presumptive truthfulness attaches to plaintiff's  
5 allegations). Moreover, all of the material facts regarding the present motion are undisputed.  
6 Therefore, partial summary judgment in favor of the Union on plaintiff Ricker's claim on the  
7 merits is also appropriate. Fed. R. Civ. P. 56(c); *cf. Autery*, 424 F.3d at 956 (where  
8 jurisdictional issue and merits are intertwined, court should employ summary judgment  
9 standard).

10 A plaintiff bears the burden of demonstrating Article III standing. *Lujan v. Defenders of*  
11 *Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992). As with other jurisdictional  
12 challenges, when a defendant challenges the underlying factual basis for Article III standing by  
13 way of a Rule 12(b)(1) motion accompanied by affidavits or other evidence (as opposed to  
14 simply challenging the facial sufficiency of the allegations), "the party opposing the motion  
15 must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject  
16 matter jurisdiction." *Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th Cir.  
17 2003); *accord Defenders of Wildlife*, 504 U.S. at 561, 112 S. Ct. at 2136-37.

18 In order to satisfy the standing requirements of Article III of the Constitution, a plaintiff  
19 bears the burden of showing that: "(1) [he] has suffered an injury-in-fact, (2) the injury is fairly  
20 traceable to the challenged action of the defendant, and (3) the injury is likely to be redressed by  
21 a favorable decision." *Loritz v. United States Court of Appeals*, 382 F.3d 990, 991-92 (9th Cir.  
22 2004); *see also United States v. Hays*, 515 U.S. 737, 743, 115 S. Ct. 2431, 2435 (1995) (party  
23 seeking the exercise of jurisdiction in his favor bears burden).

24 \_\_\_\_\_  
25 defendant's right to raise lack of subject matter jurisdiction, which of course can be raised at  
26 any time, after filing an answer. Therefore, although identical in substance to a Rule 12(b)(1)  
27 motion, this motion is most properly characterized as a Rule 12(h)(3) motion. *Elvig v. Calvin*  
28 *Presbyterian Church*, 375 F.3d 951, 955 n.2 (9th Cir. 2004); *Augustine v. United States*, 704  
F.2d 1074, 1075 n.3 (9th Cir. 1983); *Cent. Valley Ag Enters. v. United States*, 326 B.R. 807,  
810 (E.D. Cal. 2005).

1            “[T]he standing inquiry requires careful judicial examination of a complaint’s  
 2 allegations to ascertain whether the *particular plaintiff* is entitled to an adjudication of the  
 3 *particular claims* asserted.” *Allen v. Wright*, 468 U.S. 737, 752, 104 S. Ct. 3315, 3325 (1984)  
 4 (emphasis added). The Supreme Court has “consistently stressed that a plaintiff’s complaint  
 5 must establish that he has a ‘personal stake’ in the alleged dispute, and that the alleged injury  
 6 suffered is particularized as to him.” *Raines v. Byrd*, 521 U.S. 811, 819, 117 S. Ct. 2312, 2317  
 7 (1997); *see County of Riverside v. McLaughlin*, 500 U.S. 44, 51, 111 S. Ct. 1661, 1667 (1991)  
 8 (“At the core of the standing doctrine is the requirement that a plaintiff allege personal injury  
 9 fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the  
 10 requested relief” (quotation marks and citations omitted)). Federal courts are without subject  
 11 matter jurisdiction over plaintiffs who lack Article III standing, and the claims of such plaintiffs  
 12 must be dismissed. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004).

13 B.     Standing

14            Plaintiff Ricker lacks standing because he has plainly not suffered an injury-in-fact that  
 15 is traceable to the challenged action of the Union. The injury allegedly suffered by Union  
 16 members like Mr. Ricker is unambiguously set forth in the Complaint:

17            [the Union] has not provided [Plaintiff Ricker] and other member State  
 18 employees, who are potential objections, with: (1) *an opportunity to resign and,*  
 19 *as nonmembers, raise an objection* to the use of the dues/fee increase on the  
 ballot propositions, politics and other nonbargaining activities; and (2) an  
 immediate refund or reduction of the increased dues/fee amount.

20            SUF ¶ 2 (emphasis added).

21            During his deposition, Mr. Ricker expressly disavowed the allegation that he has been  
 22 denied an opportunity to resign:

23            Q.     Now, it is fair to say, isn’t it, that the [Union] has never denied you the  
 24 opportunity to resign your membership in the [Union] and become a fair  
 share fee payer, correct?

25            A.     No.

26            Q.     In other words, that is fair to say?

27            A.     Yes.

28            *Id.* ¶ 19.

1 The evidence demonstrates that Mr. Ricker had no choice but to disavow the claim  
 2 alleged in the Complaint. Mr. Ricker testified that, from the day he joined the Union in 1999,  
 3 he was aware that he could opt to become a fair share fee payer and contribute less than a  
 4 member would to the Union (*i.e.*, receive a reduction of his Union contributions). *Id.* ¶ 20. But  
 5 he decided to become a full member so that he could enjoy voting rights. *Id.* Moreover, Mr.  
 6 Ricker is aware that fair share fee payers have the right to object to paying for certain Union  
 7 expenditures, such as certain political expenditures. *Id.* ¶ 15. The governing, publicly-  
 8 available collective bargaining agreements verify Mr. Ricker's understanding. *Id.* ¶¶ 9-10.  
 9 Knowing this, Mr. Ricker nonetheless decided to retain his membership rather than resign and  
 10 pay a reduced fair share fee. *Id.* ¶ 18.

11 Indeed, Mr. Ricker has not merely been a Union member, but an *active* Union member  
 12 who has participated in activities and obtained benefits available only to Union members. He  
 13 participated in a steward training in 1999 or 2000, and he has been a Union steward since then.  
 14 *Id.* ¶ 21. Mr. Ricker has voted in one or more contract ratification elections, and he has voted  
 15 in one or more union officer elections. *Id.* ¶ 22. He ran unsuccessfully for election as a  
 16 delegate to the Union's General Council in 2005. *Id.* ¶ 23. And, for the last two or three years,  
 17 he has been a member of the Union's Legal Club, which offers reduced-priced legal services to  
 18 members. *Id.* ¶ 24.

19 Mr. Ricker's testimony makes clear that his disagreement with the Union is *not* the  
 20 claim alleged in the Complaint, but rather an entirely different dispute that is not alleged  
 21 anywhere in the Complaint:

22 Q. . . . Now, as you understand it, your claim in this case is not that you  
 23 were denied an opportunity to resign from the [Union] and become a  
 24 fair share fee payor [sic]. Your claim is that you believe you should  
 have the legal right to remain [a Union] member but object to paying for  
 this temporary assessment, correct?

25 A. Correct.

26 *Id.* ¶ 25 (emphasis added).

27 Mr. Ricker could have resigned his Union membership prior to the passage of the  
 28 temporary assessment in the summer of 2005. He could have resigned prior to the effective

1 date of the temporary assessment in September 2005. He could have resigned prior to filing  
2 this lawsuit. He did none of these things. Instead, he has chosen to remain a Union member  
3 after the passage of the temporary assessment, through its effective date, and after the filing of  
4 this lawsuit. *Id.* ¶ 26. But, having freely *chosen* not to resign with full knowledge of his right  
5 to resign, Mr. Ricker is in no position to claim that the Union *denied* him the opportunity to  
6 resign and become a fair share fee payer, which is the only claim in the Complaint relevant to a  
7 member, and which he has expressly disavowed.

8 In sum, Mr. Ricker cannot establish any of the three prongs required for constitutional  
9 standing. *See Loritz*, 382 F.3d at 991-92. He has plainly not suffered an “injury in fact” of the  
10 type alleged in the Complaint. Because he has not suffered the injury alleged in the Complaint,  
11 no alleged injury relevant to Mr. Ricker can be “fairly traceable” to the actions of the Union.  
12 Finally, because he has suffered no injury, Mr. Ricker cannot demonstrate redressability.  
13 Clearly, none of the relief sought in the Complaint could “redress” an injury that has not been  
14 suffered. As the Supreme Court held in *Steel Co. v. Citizens for a Better Environment*, 523  
15 U.S. 83, 107, 118 S. Ct. 1003, 1019 (1998): “[r]elief that does not remedy the injury suffered  
16 cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability  
17 requirement.”

18 Therefore, Mr. Ricker has no standing to pursue the claim alleged on his and other  
19 Union members’ behalf. *See Rivas v. Rail Delivery Serv., Inc.*, 423 F.3d 1079, 1083 (9th Cir.  
20 2005) (plaintiff lacks standing where the acts alleged have caused the plaintiff no injury);  
21 *Gospel Missions of Am. v. City of Los Angeles*, 328 F.3d 548, 554 (9th Cir. 2003) (no standing  
22 where injury cannot be traced to the challenged provisions); *Casey v. Lewis*, 4 F.3d 1516, 1519  
23 (9th Cir. 1993) (standing only where plaintiffs are directly injured by the challenged practices).  
24 He is not a “*particular plaintiff* . . . entitled to an adjudication of the *particular claims*  
25 asserted.” *Allen*, 468 U.S. at 752, 104 S. Ct. at 3325 (emphasis added). Nor is “the alleged  
26 injury suffered . . . particularized as to him” such that he has a “‘personal stake’ in the alleged  
27 dispute.” *Raines*, 521 U.S. at 819, 117 S. Ct. at 2317.

28 ///



